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APPENDIX

FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-363

UNITED STATES OF AMERICA, *Petitioner*

—v.—

RELIABLE TRANSFER CO., INC.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 30, 1974
CERTIORARI GRANTED NOVEMBER 18, 1974

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UNITED STATES OF AMERICA,

Petitioner

—v.—

RELIABLE TRANSFER CO., INC.

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RELEVANT DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
3- 6-70	COMPLAINT FILED. SUMMONS ISSUED.
3-11-70	Summons returned and filed with Marshall's proof of service thereon. Summons served on defendant, U.S. Atty. General, March 10, 1970.
5- 7-70	BY JUDD, J. Stipulation filed. ORDERED that the time for defendant, U.S.A. to answer, etc., be extended to May 29, 1970. (P/C mailed)
5-27-70	ANSWER filed. (Served May 27, 1970)
6- 4-70	Interrogatories propounded by Pltff. to Deft. filed.
6-15-70	Answers to Interrogatories propounded by Pltff filed.
7-14-70	Plaintiff's NOTICE TO PRODUCE, filed. (Affidavit of mailing annexed dated June 25, 1970)
7-14-70	Deft's Notice of Examination of Pltff by Capt Lindroth filed.
7-22-70	Interrogatories filed to be answered by plaintiff, etc. (propounded by the U.S.A.)
7-23-70	Notice filed of the respondent herein that plaintiff be given an examination on AUGUST 4, 1970 at 2:00 P.M.
7-24-70	Before JUDD, J. Case called. Pre-Trial conference held. Second Pre-Trial Nov. 10, 1970 at 9:30 A.M.
11- 4-70	NOTICE OF MOTION FILED for an order pursuant to Rule 37 of the F.R.C.P., directing the plaintiff, Reliable Transfer Co., Inc., to answer written interrogatories, etc. (returnable Nov. 10, 1970 at 9:30 A.M.)
11- 4-70	Memorandum filed in support of defendant's motion, etc.

DATE	FILINGS-PROCEEDINGS
11- 9-70	NOTICE OF CROSS-MOTION filed by plaintiff, etc. (original motion is on for Nov. 10, 1970 at 9:30 A.M.)
11-10-70	Before JUDD, J. Case called. Pre-Trial conference held in chambers. Second Pre-Trial scheduled for Dec. 2, 1970 at 4:30 P.M.
11-10-70	Before JUDD, J. Case called (CROSS-MOTION) in chambers. Motion granted without opposition. No order need be submitted.
11-10-70	Before JUDD, J. Motion pursuant to Rule 37, etc. Case called. Motion argued. Decision Reserved.
11-10-70	Answers of plaintiff filed to the interrogatories addressed by the defendant.
11-12-70	Affidavit of Janis G. Schuimeisters, attorney in the Admiralty and Shipping Section of the U.S. Dept. of Justice filed.
12- 2-70	Notice of U.S. Atty., filed re taking of deposition of plaintiff herein December 10, 1970 at 10:30 A.M.
12- 2-70	Before JUDD, J. Pre-Trial conference held. Second Pre-Trial scheduled for March 22, 1971 at 4:00 P.M. Case scheduled for trial on April 19, 1971 at 10:00 A.M.
1-18-71	BY JUDD, J. MEMORANDUM FILED. For reasons contained in the memorandum, the defendant will not be required to produce any more material than has already been offered to plaintiff. (See Memo)
1-18-71	Copy of memo was on this day mailed to Bureau of National Affairs; to Anthony B. Cataldo of Krisel & Beck, Esqs., for plaintiff; to Louis E. Greco, Assistant U.S. Atty., Admiralty and Shipping Sec., etc., by the secretary to JUDD, J.

DATE	FILINGS-PROCEEDINGS
1-20-71	Memorandum of Defendant filed (U.S.A.) in support of it contention, etc.
1-20-71	Plaintiff's memorandum of Law filed, etc.
1-22-71	Before Judd, J.—Case Called-Pre-trial conference held & concluded—Case adj'd to 4/19/71 For Trial.
4- 9-71	Deft's list of exhibits and witnesses filed.
4-14-71	Notice of plaintiff filed re offer of certain exhibits, etc.
4-19-71	Before JUDD, J. Case called. Marked READY and PASSED.
4-22-71	Plaintiff's Trial Memorandum filed.
4-23-71	Trial Brief of the U.S.A. filed.
9-24-71	Copy of letter of Clerk to JUDD, J. filed dated Sept. 22, 1971 addressed to ANTHONY B. CATALDO, ESQ., that case has been set down for trial before JUDD, J. Dec. 6, 1971 at 10:00 A.M.
12- 1-71	BEFORE JUDD, J. Case called. Trial ORDERED and BEGUN. Trial adjourned to Dec. 2, 1971 at 11:15 A.M.
12- 2-71	Before JUDD, J. Case called. TRIAL resumed. Defendant moves to dismiss the complaint. MOTION DENIED. Trial continued to Dec. 3, 1971 at 11:30 A.M.
12- 3-71	Before JUDD, J. Case called. Trial resumed at 11:30 A.M. Trial continued to Dec. 6, 1971 at 10:00 A.M.
12- 6-71	Deposition of defendant filed, (Oct. 28, 1970), etc.
12- 6-71	Deposition of Charles R. Finn, on behalf of defendant, etc. Dec. 1, 1970 at 10:30 A.M.

DATE	FILINGS-PROCEEDINGS
12- 6-71	Before JUDD, J. Case called. TRIAL RESUMED. Defendant renews motion to dismiss, etc. Motions denied, Trial continued to Dec. 7, 1971 at 10:15 A.M.
12- 7-71	Before JUDD, J. Case called. Trial resumed. Parties to submit briefs, etc., by Jan. 28, 1972 plus additional time granted as required, as to stenographic record, etc. DECISION RESERVED. TRIAL CONCLUDED. Parties to submit all exhibits marked in evidence with their final briefs.
12- 8-71	Deposition of defendant U.S.A., filed
12- 9-71	Letter of Janis G. Schulmeisters, Trial Atty., filed dated Dec. 9, 1971 addressed to Law Clerk to JUDD, J., Mr. Martin C. Washton re original minutes of plaintiff, etc.
12- 9-71	Deposition of pltff on 12-30-70 filed.
12-15-71	Copy of letter of Gilbert E. Fleischer, Atty., in Charge Admiralty & Shipping Section, filed dated Dec. 13, 1971 addressed to Messrs. Krisel and Beck, etc.
12-15-71	Minutes of the stenographer filed (Dec. 1, 1971)
12-15-71	Minutes of the stenographer filed (Dec. 2, 1971)
12-15-71	Minutes of the stenographer filed (Dec. 3, 1971)
12-15-71	Minutes of the stenographer filed (Dec. 6, 1971)
12-15-71	Minutes of the stenographer filed (Dec. 7, 1971)
1-27-72	PLAINTIFF'S MEMORANDUM FILED.
2- 4-72	PLAINTIFF'S MEMORANDUM FILED.
2-17-72	REPLY BRIEF FILED.
4-20-72	BY JUDD, J. MEMORANDUM and ORDER filed. A hearing to fix damages will be held on June 19, 1972 unless the parties reach agreement on the dollar amount before that time. This memorandum

DATE	FILINGS-PROCEEDINGS
	is intended to include the court's findings pursuant to F.R. Civ. P. 52(a). ORDERED that plaintiff is entitled to recover from the defendant half its damages as hereafter agreed or determined. (See Memo., and Order) Copy mailed to attys. KRISEL & BECK; to LOUIS E. GRECO, Assistant U.S. Atty., Admiralty and Shipping Section, etc.; to Janis G. Schulmeisters; to Bureau of National Affairs, by the secretary to JUDD, J.
6-12-72	Before JUDD, J. Case called. Conference held and concluded. Case adjourned to June 19, 1972 at 10:00 A.M. for trial.
6-19-72	Before JUDD, J. Case called and adjourned WITHOUT DATE for trial and for hearing on damages.
6-21-72	GOVERNMENT'S MEMORANDUM filed in opposition, etc.
6-28-72	Memorandum of Conference filed, etc.
6-28-72	LIST OF EXHIBITS filed.
7-20-72	Before JUDD, J. Case called. Attorneys for both sides present. Trial ordered and begun. Trial continued to July 21, 1972 at 2:00 P.M.
7-21-72	Before JUDD, J. Case called. Trial resumed. Trial concluded. Post-Trial papers by Aug. 15, 1972.
8-15-72	Plaintiff's MEMORANDUM filed.
9- 1-72	Government's memorandum in opposition to Pltff's claim for damages, FILED.
9- 8-72	Affidavit of RALPH LOKEN, Vice President, etc. filed.
2- 7-73	BY JUDD, J. DECISION and ORDER filed. ORDERED that plaintiff have judgment against the U.S. in the sum of $54,270.83, but without interest prior to judgment, and that the Clerk enter judgment accordingly. (See Decision, etc.)

DATE	FILINGS-PROCEEDINGS
2- 7-73	Copy of Decision, etc., was on this day sent to Bureau of National Affairs; to Gilbert S. Fleischer, Atty., in Charge, Admiralty, etc., to Krisel & Beck, Esqs., Att: Anthony B. Cataldo, Esq., by the secretary to JUDD, J.
2-13-73	Judgment of Clerk dtd 2-13-73 in favor of pltff and against deft in the sum of $54,270.83 filed. (P/C mailed to attys).
4- 6-73	NOTICE OF APPEAL FILED (U.S.A.)
4- 6-73	Copy of Notice of appeal was on this day mailed to Clerk, U.S.C.A.
4- 6-73	Copy of Notice of Appeal was on this day mailed to Krisel, Beck & Halberg, Esqs., 12 John St., N.Y., etc.
4- 6-73	Copy of Notice of Appeal was on this day mailed to Anthony B. Cataldo, Esq., 111 Bway., N.Y., N.Y. 10006
4- 6-73	Instructions on preparation of record on appeal were on this day handed to a representative of defendant herein.
4-12-73	NOTICE OF CROSS-APPEAL FILED (Reliable Transfer Co., Inc.)
4-12-73	Copy of Notice of Cross-Appeal was on this day mailed to U.S. Atty., Gilbert S. Fleischer, Atty., in Charge etc., 26 Federal Plaza Suite 4048, N.Y., N.Y. 10007
4-12-73	BY JUDD, J. STIPULATION and ORDER filed re transcript, etc., and extending time of U.S.A., etc., from April 16, 1973 to May 7, 1973.
4-19-73	MEMORANDUM of U.S.A. filed in opposition to the taxation of costs in favor of plaintiff, etc.

DATE	FILINGS-PROCEEDINGS
5- 7-73	BY JUDD, J. Order filed extending the time of the U.S.A. etc., to comply with Rules 10 and 11 of the F.R. of Appellate procedure from May 7, 1973 to July 5, 1973, etc. (P/C mailed to attys.)
8-13-73	Affidavit of Janis G. Schulmeisters so ordered by C of A extending time to docket record on appeal filed.
8-13-73	Record on appeal certified and handed to Janis G. Schulmeisters for delivery to the Court of Appeals.

COMPLAINT OF RELIABLE TRANSFER CO., INC.

[Caption Omitted]

Plaintiff, complaining of the defendant, by Krisel & Beck, its attorneys, respectfully shows unto this Court and alleges as follows:

FIRST: This is a case of admiralty and maritime jurisdiction and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Rules of Federal Civil Procedure.

SECOND: Plaintiff is a New York corporation, having a principal office and place of business at Staten Island, County of Richmond, State of New York, conducting the business of transporting petroleum products, and at all pertinent times, it was the owner and manager and operator of a self-propelled oil tanker, *Mary A. Whalen*, which was at all said time and times staunch, strong, well equipped and properly manned and in every respect seaworthy, and plaintiff was, also, the bailee of a cargo of 76,795 gallons of No. 6 oil and of a cargo of 149,931 gallons of No. 4 fuel oil laden on board the *Mary A. Whalen*.

THIRD: The defendant, United States of America, is a sovereign and has consented to be sued in admiralty and maritime matters in accordance with Title 46 U.S.C.A. Section 741 et seq.; or if it be determined that the admiralty jurisdiction does not extend over the matters of this suit, then said defendant has consented to be sued pursuant to the Federal Tort Claims Act, 28 U.S.C.A. 1346(b), 2671 et seq.

FOURTH: That the rock jetty or breakwater at the extreme southern end of Rockaway Point, on the western end of the Rockaway peninsula, in the Borough of Queens, City of New York, is and has at all times hereinafter mentioned been under the lawful jurisdiction of the United States, and at the end of said rock jetty, a permanent navigational light was constructed as required by law, as an aid to navigation of vessels proceeding in

the waters adjacent thereto and that the United States Coast Guard, an agency of the United States was invested by Chapter 5 of Title 14, U.S.C.A., with the functions and powers of maintaining, keeping and attending to all aids to navigation such as the light at Rockaway Point in order to aid the navigation of vessels in the waters near and adjacent thereto.

FIFTH: That said breakwater at Rockaway Point extends out to sea for a considerable distance, encroaching upon the navigable waters at the confluence of the Atlantic Ocean, the Lower New York Bay, Rockaway Inlet and Jamaica Bay.

SIXTH: That said light at Rockaway Point is required at all times to be lit exhibiting, a flashing red light and such light with such distinguishing features is customarily accepted and relied upon by navigators moving in and out of the Rockaway Inlet and East Rockaway Inlet and past the breakwater itself, as an aid to enable them to fix their position with relation to their proper and safe navigation in and out of said inlets or past Rockaway Point.

SEVENTH: That on or about the 23rd day of December, 1968, at about 1920 hours, the tanker, *Mary A. Whalen*, with a load of No. 6 oil intended for the *S.S. Ksyra* and a load of No. 4 fuel oil on board her intended for Oilport Terminals, Inc. in Island Park, New York, departed from Constable Hook to proceed first to Island Park and there to discharge her cargo of No. 4 fuel oil. She proceeded down the bay, through the Narrows and through Coney Island channel intending to pass south of the Rockaway Point light, keeping it clear to port after which her course could then be set for the entrance to the East Rockaway inlet. While at water level darkness prevailed, nevertheless, visibility of lighted objects at a distance was good. The *Mary A. Whalen* was proceeding at about 10 knots through the water, the tide was flooding, reducing the speed of the *Mary A. Whalen* over the ground to about 8 knots; the wind was off the aft port quarter of the *Whalen*, when she was approaching to

turn to port off Rockaway Point. While thus proceeding and when the *Mary A. Whalen* was northwest of the F.L.R. No. "2" buoy at the entrance of the lower bay, the *Mary A. Whalen's* master suddenly and simultaneously observed that the *Whalen* was close in to the westerly shore of the breakwater and that the usual flashing red light at the end of the breakwater was dead. The master of the *Mary A. Whalen* immediately put his engines full astern but the *Whaler*, nevertheless, fetched up on the beach on the westerly side of the breakwater. Unable to free herself with her own power, the captain of the *Whalen* called the Coast Guard for assistance. For three days after that the *Whalen* remained hard aground despite various efforts at freeing her from her strand. On the 26th day of December, 1968 after having discharged her cargo of oil to the barge *Oswego*, the *Whalen* was pulled free of her strand at about 15.35 hours of said 26th day of December, 1968. That as a result of the said stranding, the *Mary A. Whalen* sustained serious injury to her hull, engines and appurtenances and she was compelled to be taken to Bushey's Dry Dock to effectuate repairs, and her cargo was suffered to sustain serious loss and damage.

EIGHTH: The aforesaid stranding of the *Mary A. Whalen* and the loss or damage to her hull, engines, appurtenances and to the cargo aforesaid were not caused or contributed to by any fault or negligence on the part of those in charge of the *Mary A. Whalen*, but were caused wholly by and were due solely to the fault and negligence on the part of the defendant and those in charge of the light beacon under the jurisdiction of the defendant's Coast Guard at the end of the Rockaway Point breakwater, in the following particulars, among others, which will be brought out upon the trial.

1. In knowingly and carelessly failing to keep the light of the beacon flashing in the manner required by the Statute and Regulations.

2. In permitting said beacon to go out, depriving navigators of the aid to their navigation that was to be given by such light.

3. In failing to keep a substitute light for the darkened beacon at the end of Rockaway Point, suitable to act as an aid to navigation as required by the Statutes and Regulations.

4. In that the light beacon at the Rockaway Point breakwater was not in charge of competent personnel.

5. That the persons in charge of the light beacon at the Rockaway Point breakwater were careless, negligent and inattentive to their duties.

6. In allowing the breakwater at Rockaway Point to remain dark through the night.

7. In failing to keep the beacon under close observation, in view of its past history of light failures.

8. In failing to notify and warn navigators of the fact that the light at Rockaway Point was out.

NINTH: By reason of the premises and as a result of the stranding aforesaid, plaintiff has sustained heavy damage, consisting of the cost of salvaging the *Mary A. Whalen* and her cargo, the cost of repairs, the loss of use of the vessel, rehauling and reshipping the cargo, general average expenses and other general expenses necessarily expended or incurred in connection with said stranding and as bailee of said cargo of oil, plaintiff suffered loss or damage to a large quantity thereof, all of which, as nearly as can be estimated at present, will amount to about One Hundred Ten Thousand ($110,000.00) Dollars, no part of which sum has been paid although duly demanded.

TENTH: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, plaintiff prays:

(a) That a summons be issued to the defendant in person to appear and answer the complaint or be required to suffer a default;

(b) That plaintiff have judgment against the defendant for the sum of $110,000.00, with interest from December 23, 1968, and the costs and disbursements of this action; and

(c) That plaintiff have such other and further relief as may be just and proper in the premises.

KRISEL & BECK
Attorneys for Plaintiff
Office and P.O. Address
12 John Street
New York, N.Y. 10038
Tel. No. 964-2651

by MAURICE A. KRISEL
a member of the firm

ANSWER OF UNITED STATES OF AMERICA

[Caption Omitted]

Defendant, United States of America, for its answer to the complaint, shows upon information and belief:

1. Admits each and every allegation contained in Paragraph First.

2. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Second, and specifically denies that the oil tanker *Mary A. Whalen* at material times was staunch, strong, properly equipped and manned and seaworthy.

3. Denies each and every allegation contained in Paragraph Third, except that it admits that the United States of America has consented to be sued under the terms and conditions of the Public Vessel's Act, 46 U.S.C. Secs. 781-790, which incorporates by reference the Suits in Admiralty Act, 46 U.S.C. Secs. 741-752.

4. Denies each and every allegation contained in Paragraph Fourth, except that it admits that at the southerly end of the rock jetty at Rockaway Point, on the western end of the Rockaway Peninsula, in the Borough of Queens, City of New York, a navigational light was maintained as an aid to navigation by the United States Coast Guard, an agency of the United States, pursuant to authority vested in it by Chapter 5 of Title 14, U.S.C.A.

5. Denies each and every allegation contained in Paragraph Fifth, except that it admits that the breakwater at Rockaway Point extends out to sea.

6. Denies each and every allegation contained in Paragraph Sixth.

7. Denies each and every allegation contained in Paragraph Seventh.

8. Denies each and every allegation contained in Paragraph Eighth.

9. Denies each and every allegation contained in Paragraph Ninth, except that it admits demand and non-payment.

10. Denies each and every allegation contained in Paragraph Tenth, except that it admits the admiralty

and maritime jurisdiction of the United States and of this Honorable Court.

AS AND FOR A FIRST, SEPARATE AND COMPLETE, DEFENSE DEFENDANT, UPON INFORMATION AND BELIEF, ALLEGES:

11. If plaintiff suffered any damages as alleged in the complaint, which is denied, they were solely caused or contributed to by the negligence of the master, officers and crew members of the oil tanker *Mary A. Whalen* and/or the negligence of those for whom plaintiff is responsible.

AS AND FOR A SECOND, SEPARATE AND COMPLETE, DEFENSE DEFENDANT, UPON INFORMATION AND BELIEF, ALLEGES:

12. If plaintiff suffered any damage as alleged in the complaint, which is denied, they were solely caused by or contributed to by the negligence of third parties for whom defendant, United States of America, is not responsible.

WHEREFORE, defendant demands judgment dismissing the complaint with costs and disbursements and for such other and further relief as to the Court may seem just and proper.

EDWARD R. NEAHER
United States Attorney

LOUIS E. GRECO
Attorney in Charge
Admiralty & Shipping Section
U. S. Department of Justice
26 Federal Plaza, Suite 4048
New York, N. Y. 10007
Attorneys for Defendant

By: JANIS G. SCHULMEISTERS

SUPREME COURT OF THE UNITED STATES

No. 74-363

UNITED STATES, PETITIONER

v.

RELIABLE TRANSFER CO., INC.

ORDER ALLOWING CERTIORARI—Filed November 18, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 566443 89